

1 MICHAEL J. HARTLEY (State Bar No. 189375)
2 MACKENZIE E. HUNT (State Bar No. 251127)
3 **WESTON, BENSHOOF, ROCHEFORT,**
4 **RUBALCAVA & MacCUISH LLP**
5 333 South Hope Street
6 Sixteenth Floor
7 Los Angeles, California 90071
8 Telephone: (213) 576-1000
9 Facsimile: (213) 576-1100
10 Email: mhartley@wbcounsel.com
11 Email: mhunt@wbcounsel.com
12 Attorneys for Defendants
13 ANTARA BIOSCIENCES, INC.,
14 MARC R. LABGOLD and DANA ICHINOTSUBO

11 **UNITED STATES DISTRICT COURT**
12
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 IZUMI OHKUBO,

15 Plaintiff,

16 v.

17 ANTARA BIOSCIENCES, INC.
18 MARC R. LABGOLD AND DANA
19 ICHINOTSUBO,

20 Defendants.

Case No.: C07 06354 JW

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
ADMINISTRATIVE RELIEF;
REQUEST TO FILE SUR-REPLY
AND OBJECTIONS TO EVIDENCE
PRESENTED IN REPLY BRIEF**

Date: April 14, 2008

Time: 9:00a.m.

Honorable James Ware
Courtroom 8

[[PROPOSED] Order filed concurrently
herewith]

Complaint Filed: December 14, 2007

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 When Ohkubo starts contesting his own translation of a single-sentence
3 forum selection clause, and proper translation and construction of the entire
4 Investment Contract is at issue (Ohkubo Sur-Reply at 2:18-24), it is hard to imagine a
5 better argument in support of Defendants' argument that the Tokyo District Court is
6 the proper forum for the present dispute.

7 While we appreciate the point, the Court has been subjected to enough
8 briefing without the need for a sur-reply (or a sur-sur-reply in response). There is
9 nothing "new" about the language of the forum selection clause, or the importance of
10 Suzuki, the Investment Contract, or the Japanese Litigation. These are obvious issues
11 that were addressed in Defendants' opening papers. (*See, e.g.*, Motion at 3:18-20;
12 8:20-22; 5:19-21).

13 Ohkubo is also missing the point (and/or intentionally misleading the
14 Court). The purpose of Defendants' Motion is to determine the proper forum for this
15 dispute. The burden is on the parties to identify the major issues in dispute so the
16 Court can determine the proper forum to resolve them. That is what Defendants have
17 done. Ohkubo, by contrast, is trying to engage in a battle of the declarations over who
18 supposedly drafted the Investment Contract, or about whether Ohkubo really speaks
19 English. Those are substantive issues which are more appropriate for trial. The point
20 at this stage is simply to identify them as issues, so the Court can determine the forum
21 best suited to address them.

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1 For all of these reasons, we respectfully request that Ohkubo's
2 application be denied. To the extent the Court concludes otherwise, we will be
3 prepared to respond to the issues raised and, as necessary, provide additional evidence
4 at the hearing to address any questions the Court may have.

5 DATED: April 4, 2008

6 MICHAEL J. HARTLEY
7 MACKENZIE E. HUNT
8 **WESTON, BENSHOOF, ROCHEFORT,**
9 **RUBALCAVA & MacCUISH LLP**

10 /MJH/ Michael J. Hartley

11 Michael J. Hartley

12 Attorneys for Defendants
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14 LABGOLD and DANA ICHINOTSUBO
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